YAP SOON YEONG

v.

CHEAH UI KEAT & ORS.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CIVIL SUIT NO. 146/1984]
29 FEBRUARY 1992

TRUSTS: *Registered society of a League's own lands - League's land was registered in name of trustees - Extraordinary General Meeting - Resolution - Passed authorising trustees to execute joint venture agreement with developer to develop League's lands - Resolution passed without dissent by plaintiff or any other member present - Whether defendant estopped from challenging authority of trustees to sign joint venture agreement - Contract - Whether contract constitutes a valid and binding contract in law.*

The plaintiff, a member of the Penang Health Club Culture League ("the League") has sought a declaration of the Court on his behalf and on behalf of all other members for the time being of the League on the validity of the appointment of the defendants as trustees of the League ("the Trustees") as well as the validity of the joint venture agreement entered into by the Trustees and Lita Development Sdn. Bhd. ("the developer") who is also the 5th defendant in this suit.

The League owned some land with premises (League property) in Penang. Upon the retirement of the surviving trustees of the League the defendants were appointed as new trustees by a deed of appointment dated 24 November 1982 and on the same day the League property was transferred to the Trustees. This transfer was duly registered at the registry of Land Titles, Penang on 8 December 1982.

A notice of an Extraordinary General Meeting (EGM) which was held on 30 April 1983 was addressed to all members of the League to consider to enter into a joint venture agreement with the developer to develop the League property. At the meeting the members were informed of the proposed development plan and they resolved to authorise the Trustees to execute it. The plaintiff was also present at the EGM. The Trustees and the developer made an agreement in writing (the joint venture agreement) on 7 May 1983 pursuant to the resolution passed at the EGM. On the same day the League property was transferred to the developer in accordance with the terms and conditions of the joint venture agreement. The transfer was registered at the registry of Land titles, Penang on 16 August 1983. The developer proceeded with the proposed development of the League property.

A Special General Meeting, requisitioned by the plaintiff and 17 other members, was held on 15 October 1983. At this Special General Meeting, the EGM held on 30 April 1983 was declared null and void. The plaintiff then obtained an *ex-parte* injunction against the developer on 6 March 1984.

The plaintiff contends that the appointment of the Trustees were contrary to the provisions of the Trustees Act 1949 and therefore they had no legal capacity to enter into the joint venture agreement. Even if the appointment of the Trustees were valid they are purely bare trustees of the League and could not transact without the express directions of the League as approved by members of the League by resolution in a general meeting. By having entered into the joint venture agreement and having transferred the League property to the developers

on terms clearly disadvantageous to the League the Trustees were in breach of their fiduciary duty as trustees. Therefore the joint venture agreement dated 7 May 1983 and the transfer of the League property on the same day are void.

The defendants counterclaims that the plaintiff was not entitled in law and in fact to obtain the *ex-parte* injunction obtained on 6 March 1984 and that the defendants are entitled to special and general damages.

The central issue in this case was the validity of the joint venture agreement entered into by the Trustees and the developer for the development of the League's land.

Held:

[1] The resolution at the League's Extraordinary General Meeting held on 30 April 1983 authorising the Trustees to execute the joint venture agreement dated 7 March 1983 had been passed without dissent by the plaintiff or any other member present. Consequently the joint venture agreement was signed by the Trustees who were the registered proprietors as trustees of the League's Property at the material time.

[2] In the circumstances plaintiff is estopped from challenging the authority of the Trustees to sign the joint venture agreement.

[3] Having regard to the whole of the material evidence and in particular the contemporary documents in the case the Court was amply satisfied that the Trustees were authorised to enter into the joint venture agreement for and on behalf of the League and that the same was supported by adequate consideration therefore and constituted a valid and binding contract in law.

[4] The plaintiff's action was dismissed with costs and the *ex-parte* injunction granted by the Court on 6 March 1984 in favour of the plaintiff was in consequence dissolved and an enquiry as to damages as a result of the stoppage of the works owing to the same was also ordered.

[5] The developer was also entitled to the declaration prayed for in its counterclaim that the joint venture agreement is a valid and subsisting agreement binding upon the members of the League and its Trustees.

[Plaintiff's action dismissed with costs. Ex-parte injunction granted on 6 March 1984 in favour of plaintiff dissolved. Enquiry to damages on counterclaim.]

Cases referred to:

Royal British Bank v. Turquand [1855] E & B 248 ***(foll)***
British Thomson-Houston Co. v. Federated European Bank Ltd. [1932] 2 KB 176 ***(cit)***
Clay Hill Brick Co. v. Rawlings [1938] 4 All ER 100 ***(cit)***

For the plaintiff - K. Balasundaram; M/s. Balasundaram & Co.
For the 2nd, 3rd and 4th defendants - Yeoh Jin Aik; M/s. Shearn Delamore & Co.
For the 5th defendant - Mahinder Singh Dulku; M/s. Mahinder Singh Dulku & Co.

JUDGMENT

Edgar Joseph Jr J:

In this suit the plaintiff says that he is suing, on his own behalf and on behalf of all other members for the time being of the Penang Health Culture League (the League), the second, the third and the fourth defendants as trustee of the league (the Trustees) and the fifth defendant as developer (the developer). The plaintiff had discontinued his action against the first defendant who was the President of the League acknowledging that he had been wrongly issued.

The facts underlying the suit can be conveniently found in the statement of agreed facts where they are stated thuswise:

1. The League is a registered society within the meaning of the Societies Act 1966. The objects of the league as set forth in its rules are *inter alia* to form a body of men who will endeavour to propagate the gospel of health, strength, purity of life as well as to provide facilities for members for the attainment of physical fitness.

2. The League is the owner of all those lands and hereditaments known as Lot No. 349, section 13, Bandar Georgetown, NED, Penang held under Grant No. 5969, together with premises No. 7, Clove Hall Road, Penang erected thereon (hereinafter referred to as the League's property).

3. Premises No. 7, Clove Hall Road, Penang consists of a pre-war double storey bungalow of a semi-brick and plank nature and is the place of meeting of the League and where facilities are provided for members to attain physical fitness.

4. The League's property was purchased sometime in 1956 and was registered in the names of Cheah Seng Kim, Ooi Tiang Guan and Yap Yuen Fook as trustees of the League. The said Cheah Seng Kim died sometime in 1969 leaving Ooi Tiang Guan and Yap Yuen Fook as the surviving trustees. By a deed of appointment dated 24 November 1982 the said Ooi Tiang Guan and Yap Yuen Fook purported to retire as the surviving trustees of the League and in their stead appointed the 2nd, 3rd and 4th defendants herein as the new trustees of the League.

5. The League's property was transferred by Ooi Tiang Guan and Yap Yuen Fook (the then surviving and retiring trustees) to Tan Gim Hwa, Lim Seow Chin and Pak Wile Pung @ Peh Wei Phang (as the new trustees) by a National Land Code Form of Transfer dated 24 November 1982 and registered in the Registry of Land Titles, Penang on 8 December 1982 (Jilid 402, Folio 142, Presentation No. 16911/82).

6. A notice of an Extraordinary General Meeting to be held on 30 April 1983 addressed to all members of the League was sent by the Hon. Secretary for the following purpose stated in the said notice: "To consider to enter into joint- venture with Lita Dvpt. Sdn Bhd. to develop our land No. 7 Clove Hall Road, Penang known as Lot No. 349 T.S. 1B NED Penang a block of twelve units six-storey condominium.

7. Pursuant to the notice referred to above, the Extraordinary General Meeting of the League was held on 30 April, 1983. At the said meeting the members were, *inter alia*, informed of the matters as set in paras. 9, 10 and 11 of the statement of claim.

8. By an agreement in writing dated 7 May 1983 (the joint venture agreement) made between the League (therein called the Landowner) of the one part and the 5th defendant (therein called the developer) of the other part, the 5th defendant agreed to develop the League's property in accordance with the terms and conditions contained therein.

9. Pursuant to Clause 3(a) of the joint venture agreement the 2nd, 3rd and 4th defendants transferred the said land to the 5th defendant by a National Land Code Form of Transfer dated 7 May 1983 and registered in the Registry of Land Titles, Penang on 16 August 1983 (Jilid 423, Folio 183, Presentation No. 9706/83).

10. The 5th defendant, a licenced housing developer, submitted the relevant plans prepared by Seow Chin Architect in respect of the proposed development of the League's land for approval by the Majlis Perbandaran Pulau Pinang (MPPP) on 17 May, 1983.

11. On 2 September, 1983, the 5th defendant paid the sum of RM3,000 to Datanah Sdn. Bhd. being their fee for soil investigation of the League's land.

12. On or about 7 September, 1983 the 5th defendant submitted amended building plans to the MPPP for approval. The said plans were approved on 8 December, 1983.

13. On 14 September, 1983, the plaintiff together with 17 other members of the League requisitioned a special general meeting of the League to discuss the matters therein stated.

14. At the said Special General Meeting held on 15 October 1983 it was declared by a majority that Extraordinary General Meeting held on 30 April, 1983, was null and void.

15. By letter dated 27 January, 1984, the 5th defendant informed its quantity surveyor that it had accepted the quotation from M/s. Concrete & Steel Construction Sdn. Bhd. in the sum of RM1,500,000 for the construction of the proposed development on the League's land.

16. By letter dated 7 February, 1984, the 5th defendant's engineers informed Saw Chin Architect:

(a) R.C. plans approved on 17 January, 1984;

(b) Exemption of Earthworks approved on 20 December, 1983;

(c) Road & Drainage plans approved on 16 January, 1984.

17. On 6 March, 1984 the plaintiff obtained an *ex-parte* injunction against the 5th defendant.

Before I proceed further I would make the preliminary observation that the parties to this suit are bound by the statement of agreed facts since, at no time during the hearing, was any application by any party made to the Court for leave to resile from the same or any part thereof. Had there been such an application and had it been granted, the evidence adduced would, in all probability, have been different. It follows that it is only right and fair that I decide the case upon the basis of the facts as found in the statement of the agreed facts and the law applicable thereto.

Upon the above facts, it was agreed on all sides, in the form of a statement of agreed issues, that the following issues arose for decision:

1. Whether the 2nd, 3rd and 4th defendants have lawfully been appointed as trustees of the PHCL's land.

2. Whether the joint venture agreement dated 7 May, 1983, and the transfer dated 7 May, 1983, are void for the reasons set out in para. 16 of the statement of claim.

3. Whether the plaintiff was entitled in law and in fact to obtain the *ex-parte* injunction obtained on 6 March, 1984.

4. Whether the 5th defendant is entitled to special and general damages in the counter claim in the event it is found by this Honourable Court that the plaintiff was not entitled to obtain the injunction mentioned in para. 4 above.

I think Counsel for the plaintiffs was correct when he submitted that the central issue in the case was the validity of the joint venture agreement entered into by the Trustees and the developer for the development of the League's land. However, for reasons which will appear later in this judgment I think he was wrong in submitting that the question whether the joint venture agreement was valid hinged upon the answer to the question whether the appointment of the Trustees was valid.

In my view, even if the appointment of the Trustees was invalid, it does not necessarily follow that the joint venture agreement was void, for reasons which will appear in this judgment. It will be more convenient therefore if I straightaway embark upon a consideration of the question whether the joint venture agreement was valid in law.

The case for the plaintiff as to why the joint venture agreement and the transfer of the lands executed by the trustees in favour of the developer, pursuant thereto, were void appears sufficiently from para. 16 of the statement of claim which reads as follows:

> The plaintiff contends and will contend that the joint venture agreement dated 7 March, 1983 as well as transfer of the League's property to the 5th defendant company on the same day are void in law by reason of the following:
>
> (a) the appointment of the 2nd, 3rd and 4th defendants as trustees in place of the retiring trustees, Ooi Tiang Guan and Yap Yuen Fook by a Deed of Appointment dated 24 November 1982 is contrary to the provisions of the Trustees Act 1949 and in particular s. 37 thereof;
>
> (b) the 2nd, 3rd and 4th defendants not being duly and legally appointed as trustees of the League had no legal capacity to sign the said joint venture agreement of the transfer;
>
> (c) alternatively, even if the appointment of the 2nd, 3rd and 4th defendants as trustees is valid in law (which is denied), they are for all intents and purposes purely bare trustees of the League and could not have transferred the property of the League or entered into any agreement concerning the same without express directions of the League as embodied in a resolution duly approved by the members for the time being of the League in general meeting and duly appraised of the exact terms and conditions of the agreement as well as the intended transfer;
>
> (d) in the further alterative, even if the appointment of the 2nd, 3rd and 4th defendants have jointly and severally been in breach of their fiduciary duty as trustees by having:
>
> (i) entered into a joint venture agreement on terms clearly disadvantageous to the League;
>
> (ii) transferred the League's property to the 5th defendant company without the imposition of any caveat in favour of the League, the obtaining of any bank guarantee, or otherwise howsoever imposing any form of security to safeguard the League's property:
>
> (iii) agreeing to allow the 5th defendant company to charge the League's property to any bank or financial institution without the imposition of any security in respect thereof.

Based upon the statement of agreed facts, my findings of fact are these:

(1) That at the EGM of the League held on 30 April 1983, the plaintiff and the other members of the League had sought clarification from K.K. Loh (DW1) regarding the proposed development of the League's property.

(2) That at the EGM aforesaid, the plaintiff and the other members of the League had authorised the trustees to execute the joint venture agreement on behalf of the agreement on behalf of the League without imposing any restrictions whatever.

(3) That the names of the Trustees who had executed the joint venture agreement were, and still are at all material times to this suit, registered in the Register Document of Title, at the Registry of Land Titles, Penang, as the registered proprietors as trustees of the League's property.

(4) That pursuant to the joint venture agreement, the developer had commenced work and, in particular, did or caused to be done the several acts particularised in paras. 11, 12, 13, 15 and 16 of the statement of agreed facts.

Having regard to my findings of fact, aforesaid I must now turn to examine the legal position.

Because of the Rule in *Royal British Bank v. Turquand* [1855] E & B 248 an outsider would not have to check whether the directors were properly appointed and qualified.

The indoor management rule should be applied together with the rules on apparent authority. A party dealing with a company does not know what the actual authority of its agent is. Because of the indoor management rule, such a party does not have to find out. The actual authority of an agent is an internal matter. It is sufficient if the agent has apparent authority to do the acts in question. Persons dealing with a company in good faith may assume that acts within the apparent authority of its agent have been properly performed and need not enquire as to whether the agent's powers have been exercised or conferred regularly in compliance with all prescribed formalities. (See *British Thomson-Houston Co. v. Federated European Bank Ltd.* [1932] 2 KB 176; *Clay Hill Brick Co. v. Rawlings* [1938] 4 All ER 100).

In considering the question whether the joint venture agreement entered into by the 2nd, 3rd and 4th defendants on the one hand and the 5th defendant on the other, was binding upon the League I consider that the above principles of company law can be applied by analogy.

Now, the managing director of the developer Mr. K.K. Loh (DW1) had testified that he had instructed Mr. K.S. Choo, an Advocate and Solicitor, to make the relevant searches in the Registry of Titles, Penang, in respect of the League's property, before the joint venture agreement was entered into.

The result of that search must have revealed the following facts:

(a) the Indenture dated 20 September 1956, whereby the League's property had been purchased and conveyed to the then Trustees upon the terms and conditions appearing therein. (See pp. 18 - 29 of AB 1).

(b) the then Trustees of the League had on 24 November 1982 transferred the League's property to the 2nd, 3rd and 4th defendants as Trustees (See: pp. 35 - 38 of AB 1).

I am satisfied upon the evidence that in reliance upon the results of the search aforesaid, the developer proceeded to enter into negotiations with the Trustees with regard to the proposed development of the League's property.

The developer had no reason to suppose that the Trustees had not been properly appointed and it was under no duty to go further than make the relevant searches at the Registry of Titles, Penang. I therefore agree with the submissions of Counsel for the developer that to require the developer to make further enquiries as to the validity of the appointment of the Trustees named in the Register Document of Title would be to fly in the face of the specific provisions of the National Land Code and the Torrens System of registration; and, I would add, would be to fly in the face of the indoor management rule enunciated in *Royal British Bank v. Turquand (supra)* and the rules on apparent authority, hereinbefore mentioned.

I must add that the whole of the material evidence relating to the proposed development envisaged in the joint venture agreement dated 7 May, 1983 and the circumstances which led to the passing of the all important resolution at the League's Extraordinary General Meeting held on 30 April, 1983 authorising the Trustees to execute the same, were carefully and critically examined before me by Counsel for the plaintiff and the developer and it is unnecessary to discuss it again. Suffice it to say that that resolution had been passed without dissent by the plaintiff or any other member present and the joint venture agreement was in consequence signed by the Trustees, who I would repeat were the registered proprietors as Trustees of

the League's property at all material times. In the circumstances, it is not open to the plaintiff to challenge the authority of the Trustees to sign the joint venture agreement. Indeed, the developer who dealt with the League in good faith was entitled to assume that acts within the apparent authority of its agents the Trustees had been properly performed and need not have enquired as to whether the Trustee's powers had been exercised or conferred regularly in compliance with all the prescribed formalities. (See: *British Thomson-Houston Co. v. Federated European Bank Ltd.* (*supra*)).

It follows that the plaintiff is estopped from challenging the authority of the Trustees to sign the joint venture agreement and, in any event, I was amply satisfied, having regard to the whole of the material evidence, and in particular the contemporary documents in the case, that the trustees were authorised to enter into the joint venture agreement for and on behalf of the League and that the same was supported by adequate consideration and therefore constituted a valid and binding contract in law. I need hardly add that fraud was not even alleged much less proved.

I would also say that the plaintiff's allegation made in para. 16(d) of the statement of claim that the Trustees had entered into the joint venture agreement "on terms clearly disadvantageous to the League", was wholly unsubstantiated for the reasons particularised by Counsel for the developer at pp. 8 and 9 of his written submission. Similarly, the plaintiff's bare and general allegation made in para. 4 of the statement of claim of his defence to counterclaim that "possession of the League's land was never given to the 5th defendant (the developer) or its servants or agents and any works carried out were unilaterally done without the League's consent" was also wholly unsubtantiated and also flies in the face of Clause 4 of the joint venture agreement by virtue of which the developer had been given possession of the League's property without the necessity for reference to the plaintiff or the other members of the League. Also relevant in this regard is para. 12 of the statement of agreed facts which refers to the approval of the relevant building plans on 8 December 1983.

In all the circumstances, the plaintiff's action was dismissed with costs and the *ex-parte* injunction granted by this Court on 6 March 1984 in favour of the plaintiff was in consequence dissolved and an enquiry as to damages as a result of the stoppage of the works owing to the same was also ordered. It follows that the developer was also entitled to the declaration prayed for in its counterclaim that the joint venture agreement is a valid and subsisting agreement binding upon the members of the League and its Trustees.

Also found [1992] 2 CLJ 1292